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2 CITY ATTORNEY  
3 CITY OF ADELANTO

4 RICHARDS, WATSON & GERSHON  
5 A Professional Corporation  
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Govi FILED 6103  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
VICTORVILLE DISTRICT

**COPY** JUL 08 2005  
BY

9 Attorneys for Plaintiffs,  
10 *People of the State of California and City of Adelanto*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN BERNARDINO**  
13 **VICTORVILLE DISTRICT**

14 PEOPLE OF THE STATE OF  
15 CALIFORNIA; CITY OF ADELANTO,

16 Plaintiffs,

17 v.

18 NURSERY PRODUCTS, LLC;  
19 JEFFREY P. MEBERG;  
20 CHRISTOPHER M. SENEY; and DOES  
21 1 through 20, inclusive,

22 Defendants.

Case No. **VCVVS 038427**

**COMPLAINT FOR  
PRELIMINARY AND  
PERMANENT INJUNCTION AND  
FOR MONEY DAMAGES**

**RW** RICHARDS | WATSON | GERSHON  
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION  
**KG**

1 Plaintiffs allege:  
2

3 **FIRST CAUSE OF ACTION**

4 (By Plaintiffs Against All Defendants for Preliminary  
5 and Permanent Injunction to Abate a Public Nuisance)

6 1. This action is brought in the name of the People of the State of  
7 California and the City of Adelanto by the City Attorney of the City of Adelanto  
8 pursuant to Code of Civil Procedure Section 731 to abate a public nuisance.

9 2. At all times material hereto, the City of Adelanto was and is a  
10 municipal corporation, duly incorporated and existing under and pursuant to a  
11 Charter and the Constitution of the State of California, and situated within the  
12 County of San Bernardino.

13 3. Plaintiffs are informed and believe and thereupon allege that at all  
14 times material hereto, defendant, Nursery Products, LLC, was and is a limited  
15 liability company, duly organized and existing under the laws of the State of  
16 California with its principal office and place of business located at 647 Camino de  
17 los Mares, Suite 108-174, San Clemente, California

18 4. Plaintiffs are informed and believe and thereupon allege that at all  
19 times material hereto, defendant, Jeffrey P. Meberg, was and is the president, sole  
20 shareholder, and owner of Nursery Products, LLC.

21 5. Plaintiffs are informed and believe and thereupon allege that at all  
22 times material hereto, defendant, Christopher M. Seney, was and is the General  
23 Manager and managing agent responsible for the day-to-day operations of Nursery  
24 Products, LLC.

25 6. Plaintiffs are ignorant of the true names and capacities, whether  
26 individual, corporate, or otherwise, of the defendants named herein as Does 1  
27 through 20, inclusive, and plaintiffs therefore sue these defendants by their  
28 fictitious names. Plaintiffs will amend this complaint to state the true names and

1 capacities of such fictitiously named defendants when the same have been  
2 ascertained.

3 7. Plaintiffs are informed and believe and thereupon allege that at all  
4 times material hereto, defendants were and are the owners of that certain 40-acre  
5 parcel of real property (hereinafter referred to as the “subject property”) commonly  
6 known as 16284 Aster Road in the City of Adelanto, and whose legal description  
7 is:

8 the SE 1/4 of the SE 1/4, Tract 1, Section 6, TP 5N, R 5W, Ex E 30 ft.  
9 Co. Rd. 39.09 AC M/L, S.B.M., County of San Bernardino, (APN:  
10 3128-081-02-0000).

11 8. The Planning Commission of the City of Adelanto issued a  
12 Conditional Use Permit to defendants for the operation of a composting facility on  
13 the subject property on December 4, 2001. Defendants commenced operation of  
14 their “composting facility” on the subject property in the Spring of 2002. Contrary  
15 to what the defendants promised when they appeared before the Planning  
16 Commission to obtain their Conditional Use Permit, the composting operation on  
17 the subject property (involving the organic decomposition of wood, green-waste,  
18 and sewage sludge, euphemistically described as “human bio-solids”) has been  
19 responsible for an intense, foul stench, accompanied by swarms of flies, which has  
20 severely affected homes, schools, and businesses in the area of the subject  
21 property.

22 9. The City Council of the City of Adelanto conducted a public hearing  
23 on November 5, 2003 to receive public comments about the composting facility.  
24 The hearing commenced at 6:00 p.m. and adjourned at 10:43 p.m. During this 4¾-  
25 hour hearing, the City Council heard the following testimony (quoted from the  
26 City Council Minutes) from local residents, businessmen, and workers about foul  
27 odors, flies, dust, and debris emanating from the composting operation on the  
28 subject property:

1           ➤ Ms. Elly Burd, an employee at the DWP facility across the street from  
2 the composting facility, stated that because of the smell, “she found it hard to  
3 breathe and her allergies have been kicking up. She never had allergies before,  
4 her eyes are watering, her clothes smell. You open your car door and hundreds of  
5 flies go in.”

6           ➤ Ms. Joy Jeannette stated that “She bought a new barbeque grill and  
7 hasn’t been able to use it because of the flies.”

8           ➤ Ms. Sara Ruiz spoke about “the discomfort the kids were having  
9 when they went to Richardson Park to play or practice. Especially the hardship of  
10 the kids who have asthma, their eyes water and turn red.”

11          ➤ Ms. Terri Fruergaard stated that “Father’s Day was ruined because  
12 they couldn’t go outside.”

13          ➤ Ms. Elivra Santoyo spoke about “the flies and smell which has  
14 prevented them from doing outside activities. They have to stay indoors and the  
15 children can’t go outside to play . . .”

16          ➤ Ms. Rejeana DeHart declared that “She was not happy about the flies  
17 or the smell caused from this facility. She stated, the smell starts as early as 5:15  
18 a.m.”

19          ➤ Mr. Ron Holst, a DWP employee, stated that “They’ve had to  
20 purchase beekeeper hats in order to perform maintenance on high voltage  
21 equipment, the netting was necessary to keep flies away from workers’ mouths,  
22 eyes, and ears. . . . The employees can no longer eat their lunches outdoors.”

23          ➤ Ms. Lupe Ortiz “Spoke about the embarrassment of having to rent a  
24 hotel for company because the house was infested with flies.”

25          ➤ Mr. Robert D. Curran said in a letter submitted to the City Council,  
26 “The smell from the current operation is extremely noxious and is causing health  
27 problems to our current employees. We have regular complaints from our  
28 employees, vendors and other visitors regarding the smell . . .”

1           10. The noxious odors, swarms of flies, and dust and airborne trash  
2 emanating from the subject property have persisted to the present day. Demands  
3 by plaintiffs to control these problems have been ignored by defendants.

4           11. By reason of the persistent noxious odors emanating from the subject  
5 property, the composting operation operated by defendants on the subject property  
6 constitutes a public nuisance within the contemplation of Civil Code Sections  
7 3479 and 3480.

8           12. By reason of the persistent swarms of flies and other insects  
9 emanating from the subject property, the composting operation operated by  
10 defendants on the subject property constitutes a public nuisance within the  
11 contemplation of Civil Code Sections 3479 and 3480.

12           13. By reason of the persistent problems of dust and airborne trash and  
13 debris emanating from the subject property, the composting operation operated by  
14 defendants on the subject property constitutes a public nuisance within the  
15 contemplation of Civil Code Sections 3479 and 3480.

16           14. Unless restrained and enjoined by this Court, defendants will  
17 continue to create and maintain a public nuisance by operating their composting  
18 facility on the subject property, thereby causing great and irreparable injury to the  
19 People of the State of California and the City and disturbing and violating the  
20 rights of residents, business owners, and workers in the area. Plaintiffs have no  
21 plain, speedy, or adequate remedy at law and injunctive relief is expressly  
22 authorized by Code of Civil Procedure Section 731 for purposes of abating a  
23 public nuisance.

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**SECOND CAUSE OF ACTION**

(By Plaintiff, City of Adelanto, Against Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, for Preliminary and Permanent Injunction to Enforce a Settlement Agreement)

15. Plaintiff, City of Adelanto, repeats the allegations contained in paragraphs 1 through 14 and incorporates them herein by this reference as though set forth again in full.

16. In November 2003, defendants, Nursery Products, LLC, and Jeffrey P. Meberg, filed a federal civil rights lawsuit against the City of Adelanto, seeking to enjoin the City from interfering with the operation of the composting facility on the subject property. That lawsuit, entitled *Nursery Products, LLC and Jeffrey Meberg v. City of Adelanto* (U.S.D.C., C.D. Cal., Docket No. SACV 03-1622-GLT (ANx)) terminated when summary judgment was entered in favor of the City of Adelanto on October 7, 2004. Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, appealed from the judgment to the United States Court of Appeals for the Ninth Circuit.

17. While the appeal was pending, on or about November 1, 2004, plaintiff, City of Adelanto, and defendants, Nursery Products, LLC, and Jeffrey P. Meberg, entered into a Mutual Release and Settlement Agreement (“Settlement Agreement”), the key terms of which called for defendants to dismiss the appeal, to cease receiving and processing green waste, bio-solids, and other composting material at the composting facility on the subject property as of July 1, 2005, and to cease composting operations altogether as of September 1, 2005. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A and incorporated herein by this reference. Paragraph III A of the Settlement Agreement provides, in part:

“1. Nursery Products and Meberg shall, on or before July 1, 2005, cease and desist from receiving and processing green waste,

1 bio-solids, or any other organic material for composting at the  
2 Composting Facility located at 16284 Aster Road in the City of  
3 Adelanto.

4 “2. Nursery Products and Meberg shall, on or before  
5 September 1, 2005, permanently cease and desist from conducting  
6 composting activities at 16284 Aster Road in the City of Adelanto.”

7 18. On June 21, 2005, defendant Nursery Products, LLC, through its legal  
8 counsel, provided express written assurance to the City that it would stop  
9 receiving waste and bio-solids at the subject property on July 1, 2005 and would  
10 otherwise comply with the terms of the Settlement Agreement.

11 19. In violation of the Settlement Agreement, and in direct contradiction  
12 of their subsequent written assurance, defendants have continued beyond July 1,  
13 2005, to receive and off-load green waste, bio-solids, and other organic material  
14 for composting at the subject property.

15 20. On July 5, 2005, defendant Christopher M. Seney, General Manager  
16 of the Nursery Products composting facility, informed Kevin Murphy, the City’s  
17 Senior Code Enforcement Officer, that defendant Jeffrey P. Meberg had instructed  
18 him to continue receiving and off-loading composting materials until advised  
19 otherwise, a wilful breach of the Settlement Agreement.

20 21. By continuing to receive shipments of green waste, bio-solids, and  
21 other composting material at the composting facility after the July 1, 2005, shut-  
22 off date, defendants have breached the Settlement Agreement to the detriment of  
23 the City of Adelanto and its residents.

24 22. Given defendants’ continued acceptance of shipments of green waste,  
25 biosolids, and other organic material at the subject property after the July 1, 2005,  
26 cut-off date, in violation of the Settlement Agreement and in wilful disregard of  
27 subsequent written assurances, plaintiff, City of Adelanto, has no confidence that  
28 defendants will comply with the further provision of the Settlement Agreement

1 that they permanently stop composting activities altogether on or before  
2 September 1, 2005.

3 23. Plaintiff is informed and believes and thereupon alleges that unless  
4 restrained and enjoined by this Court, defendants will continue to breach the  
5 Settlement Agreement by continuing to receive and process green waste, bio-  
6 solids, and other composting materials at their composting facility, thereby  
7 causing great and irreparable injury to the City of Adelanto and its residents and  
8 disturbing and violating the rights of residents, businessmen, and workers in the  
9 area. The injury which will be sustained by the City and its residents is incapable  
10 of being compensated in money damages, and will require the City to commence  
11 and maintain a multiplicity of separate actions as injuries accrue, for all of which  
12 plaintiff, City of Adelanto, has no plain, speedy or adequate remedy at law.

13 24. Additionally and alternatively, the City is entitled to a Decree of  
14 Specific Performance, requiring defendants to specifically perform the terms of the  
15 Settlement Agreement by immediately refraining from receiving and processing  
16 green waste, bio-solids, and other composting material at the composting facility  
17 on the subject property.

18 25. Plaintiff, City of Adelanto, has incurred substantial expense in  
19 commencing and prosecuting this lawsuit to enforce the Settlement Agreement.  
20 Pursuant to paragraph III L of the Settlement Agreement, plaintiff is entitled to  
21 recover from defendants, Nursery Products, LLC, and Jeffrey P. Meberg,  
22 reasonable attorney's fees, costs, and necessary disbursements in addition to any  
23 other relief to which plaintiff may be entitled.

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**THIRD CAUSE OF ACTION**

(By Plaintiff, City of Adelanto, Against Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, for Money Damages for Breach of a Settlement Agreement)

26. Plaintiff, City of Adelanto, repeats the allegations contained in paragraphs 1 through 25 and incorporates them herein by this reference as though set forth again in full.

27. Pursuant to paragraph III E of the Settlement Agreement, defendants, Nursery Products, LLC, and Jeffrey P. Meberg, agreed, promised, and undertook to construct water lines, fire hydrants, and other required fire suppression facilities on the subject property.

28. Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, have breached the Settlement Agreement by failing and refusing to construct water lines, fire hydrants, and other required fire suppression facilities on the subject property as required by paragraph III E.

29. Pursuant to paragraph III F of the Settlement Agreement, defendants, Nursery Products, LLC, and Jeffrey P. Meberg, agreed, promised, and undertook to install certain street lighting improvements on Pansy Road, adjacent to the subject property.

30. Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, have breached the Settlement Agreement by failing and refusing to install the street lighting improvements on Pansy Road as required by paragraph III F.

31. Pursuant to paragraph III G of the Settlement Agreement, defendants, Nursery Products, LLC, and Jeffrey P. Meberg, agreed, promised, and undertook to install plantings and landscaping improvements around the perimeter of the subject property.

32. Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, have breached the Settlement Agreement by failing and refusing to install plantings and

1 landscaping improvements around the perimeter of the subject property as  
2 required by paragraph III G.

3 33. As a result of the breaches of the Settlement Agreement plaintiff, City  
4 of Adelanto, has been damaged in an amount not now known, but which is not less  
5 than \$25,000. Plaintiff is entitled to recover said damages from defendants  
6 Nursery Products, LLC, and Jeffrey P. Meberg, and will seek leave of court to  
7 amend this complaint when the exact amount of said damages is known.

8 34. Plaintiff, City of Adelanto, has incurred substantial expense in  
9 commencing and prosecuting this lawsuit to enforce the Settlement Agreement.  
10 Pursuant to paragraph III L of the Settlement Agreement, plaintiff is entitled to  
11 recover from defendants, Nursery Products, LLC, and Jeffrey P. Meberg,  
12 reasonable attorney's fees, costs, and necessary disbursements in addition to any  
13 other relief to which plaintiff may be entitled.

14 **WHEREFORE**, plaintiffs, the People of the State of California and the  
15 City of Adelanto, pray for judgment against the defendants, Nursery Products,  
16 LLC, Jeffrey P. Meberg, and Christopher M. Seney, and each of them, as follows:

17 On the First Cause of Action:

18 1. That defendants, Nursery Products, LLC, Jeffrey P. Meberg, and  
19 Christopher M. Seney, and each and all of their agents, employees,  
20 representatives, officers, directors, and any and all persons acting in concert with  
21 them, be preliminarily and permanently enjoined and restrained from:

22 (a) receiving and processing green waste, bio-solids, or any other  
23 organic material for composting at the subject property, located at  
24 16284 Aster Road in the City of Adelanto; and

25 (b) operating a composting facility at the subject property on or  
26 after September 1, 2005.

27 2. That defendants, and each and all of their agents, employees,  
28 representatives, officers, directors, and any and all persons acting in concert with

1 them, be permanently enjoined and commanded to remove all composting  
2 materials from the subject property.

3 On the Second Cause of Action:

4 3. That defendants Nursery Products, LLC and Jeffrey P. Meberg, and  
5 each and all of their agents, employees, representatives, officers, directors, and any  
6 and all persons acting in concert with them, be preliminarily and permanently  
7 enjoined and restrained from receiving and processing green waste, bio-solids, or  
8 any other organic material for composting at the subject property and from  
9 conducting composting activities at the subject property after September 1, 2005.

10 4. That the Court issue a Decree of Specific Performance, ordering  
11 defendants Nursery Products, LLC and Jeffrey P. Meberg to specifically perform  
12 the terms of the Settlement Agreement including, but not limited to, ceasing and  
13 desisting from receiving and processing green waste, bio-solids, or any other  
14 organic material for composting at the subject property, and permanently ceasing  
15 composting activities at the subject property on or before September 1, 2005.

16 On the Third Cause of Action:

17 5. That the Court award money damages to plaintiff, City of Adelanto,  
18 against the defendants, Nursery Products, LLC, and Jeffrey P. Meberg, in an  
19 amount to be proved at trial, with interest thereon at the legal rate from July 1,  
20 2005.

21 On All Causes of Action:

22 6. That plaintiffs have and recover from defendants their costs of suit  
23 herein, including reasonable attorney's fees as provided in the Settlement  
24 Agreement; and

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1           7.     That the Court grant such other and further relief as may seem just in  
2 the circumstances.

3  
4 DATED: July 8, 2005

MARGUERITE P. BATTERSBY  
CITY ATTORNEY  
CITY OF ADELANTO

6 RICHARDS, WATSON & GERSON  
7 A Professional Corporation  
8 MITCHELL E. ABBOTT  
9 T. PETER PIERCE  
GINETTA L. GIOVINCO

10 By:   
11 Mitchell E. Abbott  
12 Attorneys for Plaintiffs,  
13 *People of the State of California*  
14 *and City of Adelanto*

15 **[PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 446, THIS**  
16 **COMPLAINT IS DEEMED VERIFIED BY OPERATION OF LAW.]**

# SETTLEMENT AGREEMENT

## I. PARTIES

The parties to this agreement are Nursery Products, LLC, a California limited liability company ("Nursery Products"), Jeff Meberg ("Meberg"), and the City of Adelanto ("City").

## II. RECITALS

### A. The Composting Facility

Nursery Products owns and operates a composting facility ("Composting Facility") located at 16284 Aster Road, in the City of Adelanto. This Composting Facility consists of approximately 40 acres of graded land, a trailer with offices, and various pieces of equipment. The Composting Facility receives and processes both "green waste" (grass clippings, wood chips, and similar materials) and bio-solids (treated sewage). After approximately 60 days of processing at the Composting Facility, the finished material is sold as agricultural fertilizer.

### B. The Existing Bio-Solids Agreement

Prior to commencing operations of the Composting Facility, Nursery Products and the City entered into an agreement under which Nursery Products agreed to accept for processing, process, and dispose of up to five thousand (5,000) tons per year of Class "B" bio-solids generated at the City's wastewater treatment plant, without cost to the City or its residents, for a period of fifty (50) years. Under the agreement the City is responsible for transporting bio-solids to the Composting Facility, and for paying the costs of transport.

### C. The Application for an Expanded Permit

In 2003, Nursery Products applied to the California Integrated Waste Management Board ("CIWMB") for an expanded solid waste facilities permit that

would allow it to increase the amount of material composed annually by nearly 700%. The City expressed concerns to the CIWMB about expanding the capacity of the Composting Facility. The CIWMB has taken no action on the application for the expanded permit.

**D. The Lawsuit**

On November 17, 2003, Nursery Products and Meberg filed a lawsuit against the City in the United States District Court, Central District of California (Docket number SACV 03-1622-GLT (ANx)). The lawsuit alleged, in substance, that the City had violated the plaintiffs' due process rights, had impermissibly interfered with Nursery Products' business, and had caused harm to Nursery Products' and Meberg's reputations. Summary judgment in favor of the City was entered by the Court on October 8, 2004.

**E. Attorney's Fees Motion**

The City has advised Nursery Products and Meberg of the City's intention to bring a motion for an award of its reasonable attorney's fees incurred in defending the lawsuit, pursuant to 42 U.S.C. §1988. Nursery Products and Meberg dispute the City's entitlement to recover its attorney's fees. Additionally, the City on October 21, 2004, filed an application for an order taxing costs against Nursery Products and Meberg.

**F. Settlement**

The parties desire to avoid the risk and expense of further litigation and appeals, and desire fully and finally to resolve any and all claims by the City against Nursery Products and Meberg for the recovery of attorney's fees and costs, and to achieve certainty regarding the future operation of the Composting Facility and the disposal of sewage sludge generated at the City's wastewater treatment plant.

### III. AGREEMENT

The parties agree as follows:

#### A. Cessation of Operations at and Relocation of the Composting Facility

1. Nursery Products and Meberg shall, on or before July 1, 2005, cease and desist from receiving and processing green waste, bio-solids, or any other organic material for composting at the Composting Facility located at 16284 Aster Road in the City of Adelanto.

2. Nursery Products and Meberg shall, on or before September 1, 2005, permanently cease and desist from conducting composting activities at 16284 Aster Road in the City of Adelanto.

3. Nursery Products and Meberg shall, on or before September 1, 2005, remove all green waste, bio-solids, or other composting material, including all finished compost material and related equipment, from the Composting Facility and shall clean and clear the site, *provided, however*, that finished compost material and fertilizer may be retained on the site in connection with the operation of a wholesale/retail commercial nursery business, subject to such conditions as may be imposed by the City.

4. Nursery Products and Meberg shall, use their best efforts to relocate the Composting Facility to a new site, located within or outside the City limits of the City of Adelanto, and to obtain all necessary permits therefor, on or before September 1, 2005.

#### B. Abandonment of Conditional Use Permit

The parties agree that the Conditional Use Permit approved by the Planning Commission on December 4, 2001 shall be deemed abandoned and shall have no further force and effect as of September 1, 2005, or upon such earlier date as composting activities cease at the Composting Facility site.

**C. Amendment to Bio-Solids Agreement**

Concurrently with the execution of this Settlement Agreement, the parties shall execute an Amendment to the existing Bio-Solids Agreement, in the form attached hereto as Exhibit A.

**D. Change of Name or Corporate Entity**

The parties anticipate that the new composting facility may be operated under a business name different from Nursery Products, or by a corporate entity different from Nursery Products. The parties hereby agree that this Settlement Agreement, and the Amendment to the existing Bio-Solids Agreement, shall apply to and be binding upon any corporate or other legal entity in which Nursery Products or Meberg has an ownership interest, and which is engaged in the composting business in the County of San Bernardino or at a location determined by the City to be within a reasonable distance for delivery of bio-solids generated at the City's wastewater treatment plant.

**E. Compliance Schedule: Fire Hydrants**

1. Nursery Products and Meberg shall submit to the City, on or before January 1, 2005, complete plans for installation of all fire hydrants required by the City's Fire Department for the Composting Facility.

2. Nursery Products and Meberg shall, on or before March 1, 2005, commence construction of water lines, fire hydrants, and other required fire suppression facilities in accordance with plans approved by the City of Adelanto.

3. Nursery Products and Meberg shall, on or before September 1, 2005, complete construction of water lines, fire hydrants, and other required fire suppression facilities in compliance with plans approved by the City of Adelanto.

**F. Compliance Schedule: Street Lighting**

1. Nursery Products and Meberg shall submit to the City, on or before January 1, 2005, complete plans for installation of all street lighting on Pansy Road as required for the Composting Facility.
2. Nursery Products and Meberg shall, on or before July 1, 2005, commence construction of street lighting on Pansy Road in accordance with plans approved by the City of Adelanto.
3. Nursery Products and Meberg shall, on or before September 1, 2005, complete construction of street lighting on Pansy Road in accordance with plans approved by the City of Adelanto.

**G. Compliance Schedule: Landscaping**

1. Nursery Products and Meberg shall submit to the City, on or before January 1, 2005, complete plans for landscaping the perimeter of the site, as required by the Mitigation Monitoring Plan approved by the Planning Commission on December 4, 2001.
2. Nursery Products and Meberg shall, on or before July 1, 2005, commence planting and landscaping on the perimeter of the site, in accordance with plans approved by the City of Adelanto.
3. Nursery Products and Meberg shall, on or before September 1, 2005, complete planting and landscaping on the perimeter of the site, in accordance with plans approved by the City of Adelanto.

**H. Compliance Schedule: Paving of Aster Road**

1. As of September 1, 2005, or upon such earlier date as composting activities cease at the Composting Facility site, the obligation of Nursery Products and Meberg to pave the entirety of Aster Road, as required by the Conditional Use Permit approved by the Planning Commission on December 4, 2001, shall be deemed vacated.

2. Nursery Products and Meberg understand and agree that a condition of issuance of a Certificate of Occupancy for any future use of the subject property shall be a requirement that all required dedications and improvements abutting rights-of-way for the site have been made to the ultimate right-of-way shown in the General Plan and as determined by the City Engineer, as provided in Adelanto Municipal Code Section 17.10.090, *et seq.* Specifically, Nursery Products and Meberg understand and agree that, as a condition of operating any business or commercial activity on the subject property, they will be required to construct and install curbs, gutters, sidewalks, street trees, traffic improvements and drainage on Aster Road, and to pave Aster Road to the center line, as provided in Adelanto Municipal Code Section 17.10.090(a)(1).

3. As a condition and term of this Settlement Agreement, the City, Nursery Products, and Meberg agree that in lieu of the required improvements, the City Council shall accept from Nursery Products and Meberg an agreement to make the specified improvements concurrently upon the development of the parcels of property located to the east of the subject property, and identified as Assessor's Parcel Nos. 3128-121-01, 3128-121-02, and 3128-121-03, but in any event not later than September 1, 2010, as provided in Adelanto Municipal Code Section 17.10.090(d)(1). The City, Nursery Products, and Meberg agree that the agreement to make the specified improvements shall be accompanied by security deposits, a corporate surety bond, or other security as authorized by the City Engineer, as provided in Adelanto Municipal Code Section 17.10.090(d)(2) and (3), and further that the security required shall be similar to that required of other owners of similar property.

4. Nursery Products and Meberg understand and agree that a condition of issuance of a Certificate of Occupancy for any future use of the subject property shall be a requirement that the primary vehicular entrance to the subject property shall be from Pansy Road, and that the primary vehicular entrance may not be from Aster Road unless and until Aster Road is fully paved and improved, between Holly Road and Pansy Road, as provided in Adelanto Municipal Code Section 17.10.090(a)(1).

**I. Control of Odors, Vectors, Trash, and Dust**

The parties agree that until composting activities at the Composting Facility cease, Nursery Products and Meberg shall use best efforts to eliminate or minimize offensive odors, vectors, trash, and dust emanating from the site. Specifically, Nursery Products and Meberg agree to refrain from accepting delivery of green waste or of any other materials known to aggravate problems of offensive odors, vectors, trash and dust emanating from the Composting Facility site.

**J. Release of City's Claims for Attorney's Fees and Costs**

In consideration of the agreements and undertakings set forth herein, City hereby releases Nursery Products and Meberg of and from any and all liability for payment of taxable costs and attorney's fees incurred in defending the lawsuit, pursuant to 42 U.S.C. §1988.

**K. Abandonment of Plaintiffs' Right to Appeal from Judgment**

In consideration of the agreements and undertakings set forth herein, Nursery Products and Meberg hereby abandon and relinquish any rights they may have to appeal from the judgment entered against them on October 8, 2004.

**L. Default**

If any party fails to perform any obligation under this Settlement Agreement, the non-defaulting party may institute legal proceedings seeking a decree of specific performance or injunctive relief to enforce the terms of this Settlement Agreement. If an action is brought to enforce or interpret provisions of this Settlement Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

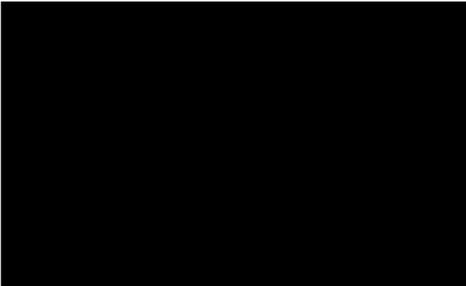
**M. Notices**

Any notice or communication required under this Settlement Agreement shall be in writing, and shall be delivered personally, by facsimile (with original

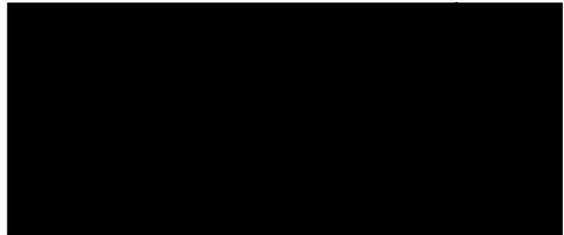
forwarded by United States Mail), or by Federal Express or other similar courier promising overnight delivery. Notice shall be deemed to have been duly given and received: (a) when delivered, if personally delivered to the recipient; (b) when fully transmitted to the recipient's facsimile device, if sent by facsimile during normal business hours, provided such device is capable of generating a written confirmation of such transmission and receipt and provided further that an original is deposited in first-class mail within two business days thereafter; or (c) on the first business day following delivery to an overnight delivery service, provided delivery is confirmed by the delivery service. Any party hereto may at any time, by giving three days' written notice to the other party, designate a new address and/or facsimile number for notices and communications pursuant to this Settlement Agreement.

If to the City:

City of Adelanto  
Attention: City Manager

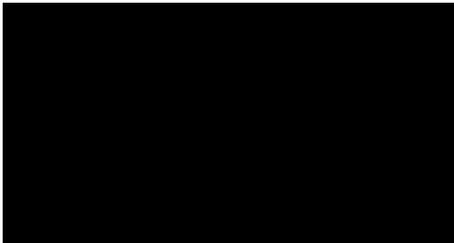


*With a copy to:*  
Marguerite P. Battersby, Esq.  
City Attorney  
Richards, Watson & Gershon

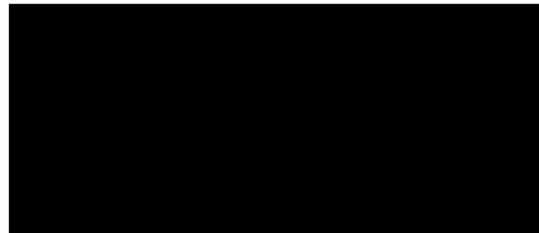


If to Nursery Products:

Nursery Products, LLC



*With a copy to:*  
David G. Hagopian, Esq.  
Holdsworth & Hagopian, LLP



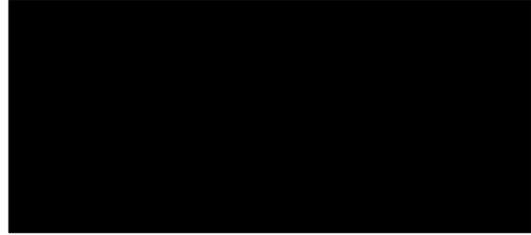
If to Jeff Meberg:

Jeff Meberg



*With a copy to:*

David G. Hagopian, Esq.  
Holdsworth & Hagopian, LLP



**N. Warranty of Capacity to Execute Agreement**

Each party represents and warrants that the individuals executing this Settlement Agreement on each party's behalf possess full authority to execute this agreement and to settle and compromise all claims settled and compromised by this agreement.

**O. Entire Agreement, Amendments, and Successors in Interest**

This Settlement Agreement contains the entire agreement of the parties and supersedes any and all prior or contemporaneous understandings, negotiations, representations, promises, and agreements, oral or written, by or between the parties with respect to the matters set forth in this Settlement Agreement. This Settlement Agreement shall not be amended, modified, or otherwise changed except by a writing duly signed by authorized representatives of Nursery Products, Meberg, and the City. This Settlement Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each of the parties.

**P. Legal Advice**

In entering into this Settlement Agreement, each party has had the opportunity to consult with and rely upon the advice of the attorneys of their own choice. Each party represents and warrants that the terms of this Settlement Agreement have been completely read by and explained to them by their attorneys,

and that those terms are fully understood and voluntarily accepted by them.

**Q. Severability**

If any portion, provision, or part of this Settlement Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Settlement Agreement, and shall not effect the validity or enforceability of such remaining portions, provisions, or parts.

**R. Governing Law**

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

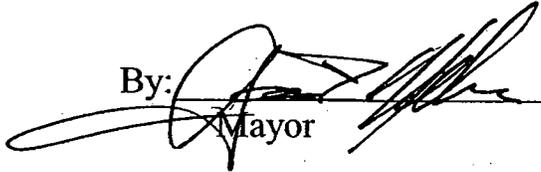
**S. Execution of Counterparts**

This Settlement Agreement shall become effective upon execution by all parties. This agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall be deemed to constitute one and the same document.

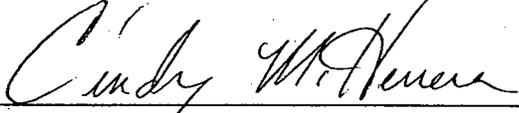
[Agreement continues next page]

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of November 1, 2004.

CITY OF ADELANTO

By:   
Mayor

ATTEST:

  
City Clerk

NURSERY PRODUCTS, LLC

By: \_\_\_\_\_  
Jeff Meberg  
President

By: \_\_\_\_\_  
Secretary

JEFF MEBERG

By: \_\_\_\_\_  
Jeff Meberg

[Signatures continue next page]

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of November 1, 2004.

CITY OF ADELANTO

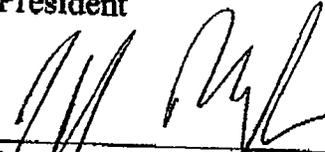
ATTEST:

By: \_\_\_\_\_  
Mayor

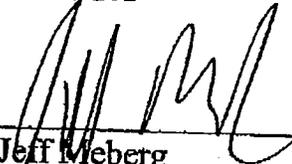
\_\_\_\_\_  
City Clerk

NURSERY PRODUCTS, LLC

By:   
\_\_\_\_\_  
Jeff Meberg  
President

By:   
\_\_\_\_\_  
Secretary

JEFF MEBERG

By:   
\_\_\_\_\_  
Jeff Meberg

[Signatures continue next page]

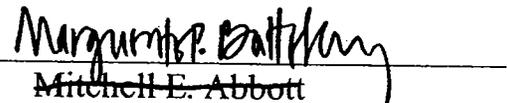
**APPROVED AS TO FORM AND CONTENT:**

HOLDSWORTH & HAGOPIAN, LLP  
DAVID G. HAGOPIAN

By   
David G. Hagopian  
Attorneys for Plaintiffs,  
*Nursery Products, LLC*  
*and Jeff Meberg*

MARGUERITE P. BATTERSBY  
CITY ATTORNEY  
CITY OF ADELANTO

RICHARDS, WATSON & GERSHON  
A Professional Corporation  
MITCHELL E. ABBOTT  
PATRICK K. BOBKO  
GINETTA L. GIOVINCO

By   
~~Mitchell E. Abbott~~  
Attorneys for Defendant,  
*City of Adelanto*

## **“EXHIBIT A”**

### **AMENDMENT TO BIO-SOLID WASTE DISPOSAL AGREEMENT**

TPS NURSERY PRODUCTS, NURSERY PRODUCTS, LLC, JEFF MEBERG, and the CITY OF ADELANTO hereby amend the “Bio-Solid Waste Disposal Agreement” dated as of June 26, 2001 between TPS NURSERY PRODUCTS and the CITY OF ADELANTO, as follows:

1. All references to TPS Nursery Products in the “Bio-Solid Waste Disposal Agreement” shall be deemed references to Nursery Products, LLC.
2. Paragraph 2 of the “Bio-Solid Waste Disposal Agreement” shall be amended to read: “Commencing November 1, 2004 and continuing for forty-eight (48) years thereafter, TPS Nursery Products or Nursery Products, LLC will accept for processing, process and dispose of Class ‘B’ bio-solids generated by or within the City of Adelanto, not to exceed five thousand (5,000) tons per year without cost to CITY or its residents.”
3. A new Paragraph 17 is added to the “Bio-Solid Waste Disposal Agreement” to read: “It is hereby agreed that this ‘Bio-Solid Waste Disposal Agreement’ and the ‘Amendment to Bio-Solid Waste Disposal Agreement’ shall apply to and be binding upon any corporate or other legal entity in which TPS Nursery Products, Nursery Products, LLC, or Jeff Meberg has an ownership interest, and which is engaged in the composting business in the County of San Bernardino or at a location determined by the City to be within a reasonable distance for delivery of bio-solids generated at the City’s wastewater treatment plant.”

**“EXHIBIT A”**

In all other respects, the “Bio-Solid Waste Disposal Agreement,” as amended, remains in full force and effect.

Dated: November 1, 2004

ATTEST:

CITY OF ADELANTO

\_\_\_\_\_  
City Clerk

By:   
\_\_\_\_\_  
Mayor

TPS NURSERY PRODUCTS

By: \_\_\_\_\_  
Jeff Meberg

NURSERY PRODUCTS, LLC

By: \_\_\_\_\_  
Jeff Meberg  
President

By: \_\_\_\_\_  
Secretary

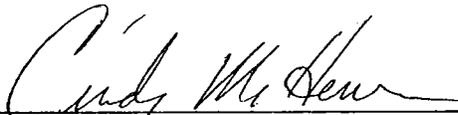
\_\_\_\_\_  
Jeff Meberg

**“EXHIBIT A”**

In all other respects, the “Bio-Solid Waste Disposal Agreement,” as amended, remains in full force and effect.

Dated: November 1, 2004

ATTEST:

  
\_\_\_\_\_  
City Clerk

CITY OF ADELANTO

By: \_\_\_\_\_  
Mayor

TPS NURSERY PRODUCTS

By: \_\_\_\_\_  
Jeff Meberg

NURSERY PRODUCTS, LLC

By: \_\_\_\_\_  
Jeff Meberg  
President

By: \_\_\_\_\_  
Secretary

\_\_\_\_\_  
Jeff Meberg

**"EXHIBIT A"**

In all other respects, the "Bio-Solid Waste Disposal Agreement," as amended, remains in full force and effect.

Dated: November 1, 2004

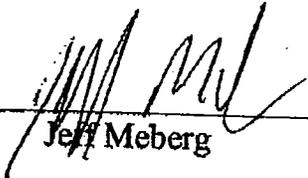
ATTEST:

CITY OF ADELANTO

By: \_\_\_\_\_  
Mayor

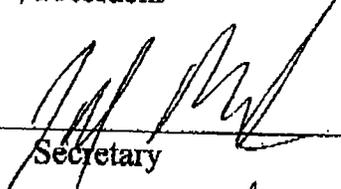
\_\_\_\_\_  
City Clerk

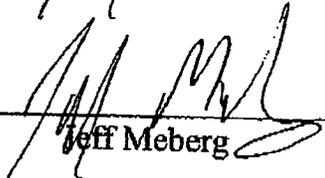
TPS NURSERY PRODUCTS

By:   
Jeff Meberg

NURSERY PRODUCTS, LLC

By:   
Jeff Meberg  
President

By:   
Secretary

  
Jeff Meberg

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

PEOPLE OF THE STATE OF CALIFORNIA;
CITY OF ADELANTO

Case No.

vs.

CERTIFICATE OF ASSIGNMENT

NURSERY PRODUCTS, LLC; JEFFREY P.
MEBERG; CHRISTOPHER M. SENEY; etc.

A civil action or proceeding presented for filing must be accompanied by this certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the VICTORVILLE District of the Superior Court under Rule 404 of this court for the checked reason:

[X] General [ ] Collection

- Nature of Action Ground
1 Adoption Petitioner resides within the district.
2 Conservator Petitioner or conservatee resides within the district.
3 Contract Performance in the district is expressly provided for.
4 Equity The cause of action arose within the district.
5 Eminent Domain The property is located within the district.
6 Family Law Plaintiff, defendant, petitioner or respondent resides within the district.
7 Guardianship Petitioner or ward resides within the district or has property within the district.
8 Harassment Plaintiff, defendant, petitioner or respondent resides within the district.
9 Mandate The defendant functions wholly within the district.
10 Name Change The petitioner resides within the district.
11 Personal Injury The injury occurred within the district.
12 Personal Property The property is located within the district.
13 Probate Decedent resided or resides within the district or had property within the district.
14 Prohibition The defendant functions wholly within the district.
15 Review The defendant functions wholly within the district.
16 Title to Real Property The property is located within the district.
17 Transferred Action The lower court is located within the district.
18 Unlawful Detainer The property is located within the district.
19 Domestic Violence The petitioner, defendant, plaintiff or respondent resides within the district.
[x] 20 Other Injunction Injunction to Abate a Public Nuisance
21 THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT.

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designated district is:

NURSERY PRODUCTS, LLC. ADDRESS
(NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR)
(CITY) (STATE) (ZIP CODE)

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on July 8, 2005 at Los Angeles, California

Signature of Attorney/Party
MITCHELL E. ABBOTT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, street number, and address):

MITCHELL E. ABBOTT, ESQ.  
RICHARDS, WATSON & GERSHON

FOR COURT USE ONLY

ATTORNEY FOR (Name): Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

STREET ADDRESS: 14455 Civic Drive

MAILING ADDRESS:

CITY AND ZIP CODE: Victorville, CA 92392

BRANCH NAME: VICTORVILLE DISTRICT

CASE NAME: PEOPLE OF THE STATE OF CALIFORNIA v. NURSERY PRODUCTS, LLC, et al.

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000)  Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter  Joinder  
Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)

CASE NUMBER:

JUDGE:

DEPT.:

All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

- Auto (22)
- Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
- Product liability (24)
- Medical malpractice (45)
- Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- Business tort/unfair business practice (07)
- Civil rights (08)
- Defamation (13)
- Fraud (16)
- Intellectual property (19)
- Professional negligence (25)
- Other non-PI/PD/WD tort (35)

Employment

- Wrongful termination (36)
- Other employment (15)

Contract

- Breach of contract/warranty (06)
- Collections (09)
- Insurance coverage (18)
- Other contract (37)

Real Property

- Eminent domain/Inverse condemnation (14)
- Wrongful eviction (33)
- Other real property (26)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38)

Judicial Review

- Asset forfeiture (05)
- Petition re: arbitration award (11)
- Writ of mandate (02)
- Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812)

- Antitrust/Trade regulation (03)
- Construction defect (10)
- Mass tort (40)
- Securities litigation (28)
- Environmental/Toxic tort (30)
- Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- Enforcement of judgment (20)

Miscellaneous Civil Complaint

- RICO (27)
- Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- Partnership and corporate governance (21)
- Other petition (not specified above) (43)

2. This case  is  is not complex under rule 1800 of the California Rules of Court. If case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c.  Substantial amount of documentary evidence
- d.  Large number of witnesses
- e.  Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court
- f.  Substantial post-judgment judicial supervision

3. Type of remedies sought (check all that apply):

- a.  monetary
- b.  nonmonetary; declaratory or injunctive relief
- c.  punitive

4. Number of causes of action (specify): Three

5. This case  is  is not a class action suit.

Date: July 8, 2005

MITCHELL E. ABBOTT, ESQ.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet shall be used for statistical purposes only.